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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC

In the Matter of

*Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Dos Palos and Chualar, California)*

MM Docket No. 01-248
RM-10241

To: **Chief, Allocations Branch**

SUPPLEMENT TO MOTION TO STRIKE

KNT0, Inc., licensee of Station KNT0(FM), Livingston, California, by its attorney, hereby supplements its "Motion to Strike" filed on December 31, 2001 with regard to the "Reply Comments of Coyote Communications, Inc." filed by Coyote Communications, Inc. on December 26, 2001. With respect thereto, the following is stated:

Coyote's Counterproposal evidently was placed on *Public Notice* on December 11, 2001. Report No. 2519. Therefore, Coyote was permitted to file reply comments through December 26, 2001. KNT0 respectfully withdraws any suggestion that generically Coyote's "Reply Comments" were unauthorized.

Nevertheless, KNT0 must reiterate its position that Coyote's "reply comments" went far beyond the scope of its permitted reply. This pleading is a blatant attempt on the part of Coyote to supplement its deficient Counterproposal. As previously has been pointed out, the "Big Sur" locale is neither incorporated nor listed in the U.S. Census. It is the Commission's policy that, if a community is not incorporated or listed in the census reports, the proponent of the allotment must make a showing, demonstrating that the place is a "geographically identifiable population grouping." *Benavides, Bruno and Rio Grande, TX*, 13 FCC Rcd 2096, ¶ 8 (Chief, Allocations

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Branch 1998). This Coyote did not do, despite the fact that counterproposals are required to be "technically correct and substantially complete" at the time they are filed. See Broken Arrow, OK, et al., 3 FCC Rcd 6507, 6511 n.2 (Policy and Rules Division 1989).

Once again, Coyote's predicament is essentially identical to that found in *Pike Road and Ramer, AL*, 10 FCC Rcd 10347 (MMB 1995). In that case, a counterproposal was submitted for an alleged community that *also* was neither incorporated or listed in the U.S. Census. The Commission ultimately rejected the counterproposal, stating:

it was incumbent upon Miller to initially present the Commission with sufficient evidence to demonstrate that Ramer is a community for allotment purposes. See Garden City, Indiana, 6 FCC Rcd 3747 (1991). We conclude that Miller failed to provide substantially complete information with his counterproposal, in contravention of Commission policy, to demonstrate that Ramer has political, social, economic or cultural indicia, or to provide the testimony of local residents attesting to Ramer's community status.

Id. at ¶ 13 (emphasis added). Thus, as noted, Coyote was not entitled to withhold the information for filing at this late date. Rather, Coyote was required to file the information "with [its] counterproposal."

In this circumstance, the burden was on Coyote to attempt to establish that "Big Sur" is an acceptable community in the course of the body of its counterproposal. Because it did not do so, as in *Broken Arrow*¹, the counterproposal was improperly accepted, and must not be considered in this proceeding.²

¹ *Pike Road and Ramer, AL*, 10 FCC Rcd 10347 (MMB 1995) ("the proposal was accepted for consideration. In retrospect, we believe its proposal should not have been accorded such status").

² Nevertheless, as noted in this proceeding, in the event the Big Sur counterproposal is accepted, Channel 236A, that can be allotted in place of Channel 240A, thereby eliminating the conflict between the KNTD proposal and the Coyote Big Sur proposal.

WHEREFORE, it respectfully is requested that this Motion be granted, and that the "Reply Comments of Coyote Communications, Inc.," filed by Coyote Communications, Inc., be stricken.³

Respectfully submitted,

KNTD, INC.

By: 
Dan J. Alpert

Its Attorney

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January 9, 2001

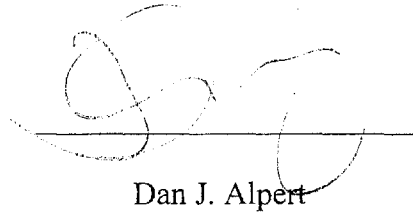
³ It also is noted that Coyote Communications, Inc. evidently failed to serve copies of its pleading on all parties to this proceeding. This represents an further reason why the pleading must be stricken.

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that on January ¹⁹/₉, 2002, the foregoing document has been served upon the following by First Class Mail:

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